

AGENDA ITEM # 8.B.
DATE: 1-26-2004
COAC NUMBER: 04-1952

**CITY OF GOODYEAR
CITY COUNCIL ACTION FORM**

SUBJECT: Council will consider, for possible action, awarding on call, Job Order Contracts for traffic signal maintenance and installation, roadway repairs and roadway markings.

STAFF PRESENTER: Don French
COMPANY: Various
CONTACT: Various

RECOMMENDATION:

Council award Job Order Contracts to nine (9) companies listed below for emergency and supplemental traffic signal maintenance and repairs, traffic signal installations, roadway markings, roadway seal coats and minor roadway repairs. Each contract will be not to exceed \$100,000 per year, subject to annual budget appropriations.

COMMUNITY BENEFIT:

The community will benefit from the efficient and timely delivery of contracted services in the event of traffic signal malfunctions and knockdowns, and for the completion of roadway seal coats, roadway markings, and minor roadway repairs. These services can be provided by the selected vendor more efficiently and at less expense than through purchasing the necessary equipment and hiring additional personnel, as the work is intermittent and performed on an as-needed basis.

DISCUSSION:

On-call, job order contracts will provide complex and emergency traffic signal maintenance services; maintenance and corrective roadway striping; traffic signal installation of City-supplied equipment; minor roadway repairs; and routine roadway maintenance on an on-call basis. The traffic signal maintenance contractor will provide 24-hour emergency response to malfunctions, accident-related damage and other traffic signal equipment incidents. The three pavement contractors will be asked for quotations each time a project is contemplated, except in emergency situations, at which time the contractor best able to respond will be utilized. Small roadway striping projects will utilize the services of the roadway marking contractor at the established unit prices.

Larger, non-emergency, projects not related to traffic signals maintenance will be bid out according to the City of Goodyear's procurement code. Contract amounts will be limited to \$100,000 per contract per year, unless otherwise modified by Council by future actions. The term of each job order contract is three years.

A Request for Qualifications was advertised in the West Valley View on October 22, 2003 and October 29, 2003. The contractors deemed to be qualified and responsive were as follow:

Contractor

Phoenix Highway Services
AJP Electric
Contractors West
Roadway Markings, Inc.
Southwest Slurry Seal, Inc.
Cactus Surfacing Solutions
Sunland Asphalt
Specialized Surfacing
NPL

Description of Services

On-call traffic signal maintenance and repairs
Traffic signal installation and repairs
Traffic signal installation and repairs
Roadway markings
Pavement and pavement seal coats
Pavement and pavement seal coats
Pavement and pavement seal coats
Pavement, seal coats and concrete construction
Asphalt and concrete construction, rental equipment

Departmental Impacts

Providing on-call, job order contracts will enable Public Works to respond more quickly to emergency call outs by the Police and Fire Departments, as well as to complaints and requests from citizens. Public works personnel will be supplemented by other knowledgeable technicians and construction professionals, increasing our ability to respond to minor problems as well as major emergencies that may occur.

FISCAL IMPACT:

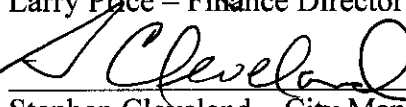
Funding will be provided from existing departmental budgets for traffic signal maintenance, roadway striping, and street maintenance. Roadway paving and seal coating funding will be provided through departmental budgets for related items or from Capital Improvement Program funding for project-related work.

REVIEWED BY:


Grant Anderson – Deputy City Manager


Jim Oeser – City Attorney


Larry Price – Finance Director


Stephen Cleveland – City Manager

PREPARED BY:


Don French – PW Superintendent


Cato Esquivel, Jr. PW Director

AGREEMENT FOR CONTRACTUAL SERVICES

PARTIES: City of Goodyear, a municipal corporation of the State of Arizona c/o City of Goodyear, 190 N. Litchfield Road, P.O. Box 5100 Goodyear, Arizona 85338, hereinafter called the "City",

And



hereinafter designated as "CONTRACTOR".

PLACE: Goodyear, Arizona

DATE: [REDACTED]

EFFECTIVE DATE: [REDACTED]

RECITALS:

1. The City has a need for contractual services as described herein and Contractors have experience in providing the kinds of engineering services sought by the City.
2. City has a need for delivery of these services in a designated time frame.
3. Contractors can provide the services within the time frame required by City.

COVENANTS:

1. Employment:

- (a) Project Name: The City engages the Contractors to perform professional services hereinafter described for a project known and described as the "On-Call Streets Maintenance and Traffic Signal Job Order Contractor Services", hereinafter referred to as "Project" for the following described mutual consideration.
- (b) Completion Time: The Contractors will commence work when ordered, in writing by a Work Order by the City and agree that they will proceed with the work without interruption, completing the project as set forth in the completion time agreed upon by the City and Contractors, prior to proceeding.

2. City's Responsibilities:

- (a) Information: Provide full information as to its requirements for the Project.
- (b) Assistance: City will assist the Contractors by placing at their disposal all reasonably available information concerning the site of the Project, including

5. **Method and Manner of Payment:**

- (a) **Mutually Agreed Accounts - Sample Billing:** Contractors shall bill City Monthly, unless otherwise agreed, and shall in said billing set forth an itemized, by mutually agreed accounts, the expenses incurred on behalf of the City, and as provided by this Agreement, and the compensation due hereunder and said billing shall be in the form attached hereto as Exhibit C, which Exhibit C is a sample and example of a billing, together with a description of the mutually agreed accounts.

6. **Non-Assignable:** Neither the City nor the Contractors shall assign their interest in this Agreement without the written consent of the other.

This Agreement shall not be assignable except at the written consent of the parties hereto, and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

7. **Uncontrollable Force:** All agreements on the City's and Contractor's part are contingent upon, and no party shall be responsible for damages or be in default or be deemed to be in default by reason of, delays in performance by reason of strikes, lockouts, accidents, acts of God, or delays caused by failure of City or City's agents to furnish information or to approve or disapprove Contractor's work promptly, or due to late or slow, or faulty performance by agencies, the performance of whose work is precedent to or concurrent with the performance of the Contractor's work. In the case of the happening of any such cause of delay, and as agreed to by the City the time of completion shall be extended accordingly but not unreasonably and in the event of a prolonged delay in the opinion of the City the contract may be terminated.

8. **Changes - Waiver of Liability:** In the event that any changes are made in the plans and specifications by the City or persons other than the Contractors and not approved by the Contractors which affects the Contractor's work, any and all liability arising out of such damages is waived as against the Contractors for that part of the work and the City assumes full responsibility for such changes unless City has given Contractors prior notice and has received from Contractors written consent for such changes. All changes shall be in writing signed by the City or its authorized representative and Contractors. Absent a written change order in the form of Exhibit D, no change shall be authorized.

9. **Partial Performance:** In the event all or any portion of the work prepared or partially prepared by the Contractors shall be suspended, abandoned, or terminated, the City shall pay the Contractors only as agreed in paragraph 4(c) for the work performed and accepted by the City as of the date of termination but not to exceed the maximum contract amount set forth in Exhibit "A".

10. **Degree of Skill:** The Contractors agrees that in the performance of their services, Contractors will use that degree of skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in Phoenix, Arizona. All work shall comply with Project plans, city and Goodyear standards and " Maricopa Association of Governments, Uniform Standard Specifications and Details for Public Works Construction".

11. **Indemnification:**

- (a) The Contractor shall indemnify and hold harmless the City and any of its departments, agencies, officers, employees and representatives from all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from the performance or failure to perform the services for the City required of the Contractor hereunder or in connection therewith and caused by a negligent error, omission or act of the Contractor, its officers, employees. The amount of insurance required of Contractor hereafter shall not be a limit on the liability of Contractor under this indemnity.

12. **Not a Joint Venture or Partnership:** It is covenanted and agreed that City is not a principal or a partner nor a co-developer with Contractors.

13. **Independent Contractors:** Contractors shall be an independent Contractor and not an agent or employee of the City. Contractor shall supervise and direct the independent Contractor work and shall be solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work, and shall be responsible to the City for the acts and omissions of their employees, and agents, and other persons performing any of the work under a contract with Contractors.

14. **Litigation:** Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages not agreed to by the City or any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees and court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude the parties from agreeing to non-binding arbitration or if agreed binding arbitration if they each so elect in the event of a dispute hereunder.

15. **Insurance:** Without limiting any of their obligations or liabilities, the CONTRACTOR, at his own expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and in form reasonably satisfactory to the CITY. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A- and a category rating of not less than "8." Use of alternative insurers requires prior approval from CITY. Insurance provided by CONTRACTOR shall be primary.

A. **General Clauses**

1. **Additional Insured:** The insurance coverage, except Workers' Compensation and in Professional Liability, required by this contract, shall name the CITY, as additional insured.
2. **Coverage Term:** All insurance required herein shall be maintained in full force and effect until Services required to be performed under the terms of the Contract are satisfactorily completed and formally accepted; failure to do so may constitute a material breach of this Contract, at the sole discretion of the CITY.

previous reports and other data in possession of City relative to the particular scope of the work described herein, or to the design and construction of the Project.

- (c) Available Date: Furnish, or cause to be furnished to the Contractors, to the extent such information is reasonably available to the City, property, boundary, right of way, topographic and utility surveys.
- (d) Access to Lands: Provide reasonable access to, and make provisions agreeable to Contractors and City for the Contractors to enter upon lands as required for the Contractors to perform their work under this Agreement.
- (e) Authorized Representative: Designate in writing a person to act as the City's authorized representative with respect to the work to be performed under this Agreement, which designation until further notice, is Cato C. Esquivel, Jr.
- (f) Notice and Duty to Give Notice of Defect: Give prompt written notice to the Contractors whenever a department head of City or person designated by a department head to inspect the Project, discovers any material defect in the Project.
- (g) Approval and Duty to Obtain: Obtain approval of all governmental authorities having jurisdiction over the project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project. Contractors agree to fully cooperate with City in this regard.

3. Contractor's Duties: Those specific services as set forth in Exhibit "A".

4. Consideration/Compensation:

- (a) Contractor's Fee: Payments shall be made in accordance with the contractors pricing sheets or as negotiated for items of work not specified on the pricing sheets.
- (b) Billing Schedule: Contractors shall submit a bill to the City based on satisfactory completion of the work, and after all components have been tested and accepted by the City of Goodyear

City shall pay said bill within thirty (30) days of the receipt of bill.

- (c) Termination Clause: The City may at any time terminate this Agreement by issuing a written notice to the Contractors to be effective as of a date chosen by the City, and thereupon the Contractors shall receive as compensation in full for service performed to the date of such termination only such a fee for the percentage of the accepted work actually completed. Notwithstanding the foregoing, this fee shall be as determined acceptable in an amount to be agreed mutually by the Contractors and the City.

3. **Primary Coverage:** The CONTRACTOR's insurance, except Worker's Compensation and Professional Liability, shall be primary insurance as respects CITY and any insurance or self insurance maintained by CITY shall be excess of the CONTRACTOR'S insurance and shall not contribute to it.
4. **Claim Reporting:** Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect CITY.
5. **Waiver:** The policies, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the work of the CONTRACTOR.
6. **Deductible/Retention:** The policies set forth in these requirements may provide coverage which contain deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City of Goodyear. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amounts. The City of Goodyear, at its option, may require CONTRACTOR to secure payment of such deductible or self-insured retention by surety bond or irrevocable and unconditional Letter of Credit.
7. **Certificates of Insurance:** Prior to commencing services under this Contract, CONTRACTOR shall furnish CITY with Certificates of Insurance, or formal endorsements as required by the Contract, issued by CONTRACTOR'S insurer(s), as evidence that policies providing the required coverage's, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Project and shall provide for not less than thirty (30) days advance Notice of Cancellation, Termination, or reduction in limit of liability or scope of coverage. Such certificates shall be sent directly to Dean Coughenour, Risk Management Department, City of Goodyear, 190 N Litchfield Road, PO Box 5100, Goodyear, Arizona 85338.

B. Workers' Compensation: The CONTRACTOR shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR employees engaged in the performance of the Services.

In case services are subcontracted, the CONTRACTOR will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as provided by CONTRACTOR.

C. Automobile Liability: Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, for each occurrence regarding any owned, hired, and non-owned vehicles

assigned to or used in performance of the CONTRACTOR services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacement thereof).

D. Commercial General Liability: Commercial General Liability insurance with limit of not less than \$1,000,000, for each occurrence and \$2,000,000 in the aggregate. The policy shall include coverage for bodily injury, property damage, personal injury, products and contractual covering, but not limited to, the liability assumed under the indemnification provisions of Section IX.B of this Contract which coverage will be at least as broad as Insurance Service Office policy form CG 001 1-11-88 or any replacement thereof. The certificate of insurance for the Commercial General Liability insurance policy shall expressly cover CONTRACTOR'S obligation of indemnification required in Section IX of this agreement.

A general liability insurance policy may not be written on a "claims made" basis.

E. Umbrella/Excess Liability: Umbrella/Excess Liability insurance with an limit of not less than \$2,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above. Primary per occurrence coverage may be used to fulfill this requirement.

F. Valuable Papers: Valuable Papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or other similar data relating to the services of the CONTRACTOR used in the completion of this contract.

16. **Severability:** If any part of this agreement is found by a court to be unenforceable, the remaining provisions shall, nonetheless be enforceable to the extent allowed by law.
17. **Exclusive Use of Services - Confidentiality:** The services agreed to be provided by Contractor within this Agreement are for the exclusive use of the City and Contractor shall not engage in conflict of interest nor appropriate City work product or information for the benefit of any third parties without City consent.
18. **Sole Agreement:** There are not understandings or agreements except as herein expressly stated.
19. **Captions:** Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.
20. **Time is of the Essence:** The timely completion of the Project is of critical importance to the economic circumstances of the city.
21. **Conflict of Interest:** This contract is subject to the provisions of A.R.S. 38-511.

"CONTRACTORS"

"CITY"
CITY OF GOODYEAR

BY _____

BY _____
City Manager

Print _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney